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IN THE HIGH COURT OF JUDICATURE AT BILASPUR(CHHATTISGARH)

WRIT PETITION NO. 81 OF 2004

PETITIONER : Raghunandan Prasad Banjare, son of Pheruram Banjare, aged about 50 years, resident of C.C.I.Colony,Post-Mandhar, District-Raipur,(C.G.)

V E R S U S

RESPONDENTS : 1. The Industrial Court, Raipur, District Raipur,(C.G.)

: 2. Cement Corporation of India, through its Manager, (P & A) Mandhar, District-Raipur,(C.G.)

P.R. No. 62104
Presented by Shri S.R.J. Jaiswal
dated 06.01.04

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 81 of 2004

Petitioner : Raghunandan Prasad Banjare

-Versus-

Respondents : The Industrial Court, Raipur & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri B. D. Guru, Advocate for the Petitioner.

Shri N. K. Vyas, Advocate for the Respondent No.2.

ORDER

(Passed on this 6th day of February, 2007)

1. The present petition filed under Article 226/227 of the Constitution of India, seeking writ/direction to reinstate the petitioner in service with back wages and other consequential benefits without impugning the order dated 22.10.2003 (Annexure P/1), passed by the Industrial Court, Raipur in Civil Appeal No. 258/M.P.I.R./A-II/2001 wherein the order of removal dated 20.12.1994 (Annexure R-2/2) was held as valid, legal and proper.

2. The facts in nutshell are that the petitioner was working as Electrician-cum-Wiremen in the respondent No.2 Corporation. The petitioner remained absent from his duty from 10.10.1994 till 20.12.1994. The petitioner vide application dated 9.10.1994 informed the employer that he is leaving his official accommodation allotted to him at Mandhar and proceeding to his parental house, seeking leave from 10.10.1994 to 20.12.1994.

3. The petitioner without waiting for grant of leave proceeded for his parental house. Thereafter vide letters (Annexure P/3 collectively), the petitioner requested for extension of his leave till 1.12.1994. Thereafter the petitioner remained absent till 20.12.1994. In the

meantime the respondent Corporation exercising its powers under clause 10 (h) of the Standing Orders for Mandhar unit of the Cement Corporation of India, issued a notice on 30.11.1994 (Annexure R-2/1), directing the petitioner to report on duty within 15 days. Admittedly, as held by the Labour Court as well as by the Industrial Court, this notice was received by the petitioner. Despite notice the petitioner did not take any step either to join his duties within 15 days or to make any representation in regard to his inability to comply with the notice. The respondent-Corporation exercising its powers provided under clause 10(h) of the Standing Orders, terminated the services of the petitioner and struck off his name from the roll of the Corporation vide order dated 20.12.1994 (Annexure R-2/2).

4. Being aggrieved, the petitioner filed an application under section 31(3) of the Chhattisgarh Industrial Relations Act, 1960 before the Labour Court. The Labour Court vide order dated 18.9.2001 (Annexure P/2), passed in Case No. 18/MPIR/95, after having considered all the facts held that the petitioner despite receiving the notice under clause 10 (h) of the Standing Orders did not join the duty. The Labour Court in the facts and circumstances of the case further held that the punishment imposed was disproportionate, thus the Labour Court directed reinstatement of the petitioner in service with full back wages with a further direction of stoppage of one increment of the petitioner and penalty of Rs. 500/-.

5. The Industrial Court, in appeal filed by the respondent No.2 Corporation having considered all the aspects of the matter came to the conclusion as under :-

> " हमारी राय में अधीनस्थ न्यायालय ने एक ओर तो कर्मचारी को दुराचरण सिद्ध होना माना है तथा दूसरी ओर सम्पूर्ण पिछला वेतन दिलाते हुए पुनःस्थापना किये जाने का आदेश दिया है जो सर्वथा अवैधानिक है जिसकी पुष्टि अपील में नहीं की

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जा सकती क्योकि कर्मचारी को पूर्व में तीन बार इसी दुराचरण की और अधिक लम्बे समय के लिये पुनरावृत्ति की गई ऐसी दशा में प्रबंधन ने स्टैंडर्ड स्टेंडिंग आर्डर्स (10) एच के प्रावधानों के अन्तर्गत कर्मचारी के लिस्ट से उसका काटा जाना उचित था । अधीनस्थ न्यायालय ने दंड के मामले में प्रबंधन के ओदश को पुनः स्थापना कर स्वयं का आदेश देना भी उचित नहीं ठहराया जा सकता ।"

6. Shri B. D. Guru, learned counsel appearing for the petitioner in this petition contended that the petitioner was not in such a position to attend the duties within 15 days. The action of the respondents, striking off the name of the petitioner from the roll of the company was disproportionate, thus the order of the Labour Court is illegal and invalid. Learned counsel relied on a decision of the Supreme Court in the case of **Uptron India Ltd. Vs. Shammi Bhan and another** {(1998) 6 SCC 538 }.

7. Per contra, Shri N. K. Vyas, learned counsel appearing for the respondent-Corporation submits that the order of removal of the petitioner from service and striking off his name from the roll of the Corporation is strictly in accordance with the provisions of the Standing Orders. The petitioner has deliberately and unauthorizedly absented himself and had not attempted to make any representation or join the services within the statutory period of 15 days from the date of issue of the notice. Clause 10 (h) of the Standing Orders is relevant, which reads as under :-

"10. FESTIVAL, HOLIDAYS AND LEAVE

(h) If any workman/employee remains absent beyond 15 days continuously without prior sanction of leave/permission/ intimation the management thereafter issue him a notice to resume work/duty within a fortnight with sufficient justification from his unauthorized absence, failing which he will be deemed to have abandoned the services of Corporation voluntarily and his name will be struck off from the rolls of the Corporation. If such

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workman/employee resumes work/duty within a fortnight of issue of the notice and management is not satisfied about his absence, the workman shall be liable for disciplinary action according to standing orders. In case a workman loses his service on the above grounds, the management will consider for keeping his name on the 'badli list'

Thus the order of the Labour Court is perfectly legal just and proper.

8. Having heard learned counsel for the parties and having regard to the facts and circumstances of the case, the reliance of the petitioner in **Uptron India Ltd.** (supra) is not relevant to the facts of the present case. It appears that the conditions of clause 17 (g) of the Standing Order in that case does not provide for 'automatic termination' but the services were liable to automatic termination. In the present case clause 10 (h) of the Standing Order is very clear and there is no scope for the management to consider and exercise its powers. The facts and law involved in the case of **Uptron India Ltd.** (supra) are different and not applicable to the facts of the present case.

9. The facts are admitted that the petitioner remained absent unauthorizedly from 10.10.1994 to 20.12.1994 and has not complied with the notice issued by the respondent-Corporation. In view of that no exception can be taken to the findings recorded and the order passed by the Industrial Court and as such no interference is warranted in the order dated 22.10.2003 (Annexure P/1) passed by the Industrial Court.

10. As a result and for the reasons stated above, this petition stands dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur